



U.S. Civil Rights Commission

A briefing on the civil rights implications of the Fair Labor Standards Act Section 14(c) Subminimum Wage Certificate Program on people with disabilities.

November 15, 2019

Testimony of Anil Lewis, Executive Director of Blindness Initiatives for the National Federation of the Blind

To the honorable members of the U.S. Civil Rights Commission, and distinguished panelists, I continue to grow ever hopeful that we will be able to eliminate the historic violation of the fundamental civil rights of workers with disabilities that have been subjected to the legalized discriminatory practice set forth in Section 14(c) of the Fair Labor Standards Act (FLSA).

I appreciate the questions presented by the Commission in preparation for this briefing. The talent possessed by members of the various panels will undoubtedly offer compelling data, demonstrate effective strategies, and offer a number of success stories that address the questions. I agree that answering the questions should move us closer to a commitment to striving for competitive integrated employment opportunities for all people with disabilities. However, this will only be the case if we start with the belief in the capacity of all people with disabilities to be competitively employed in integrated work environments. Otherwise, regardless of the data provided, the effective strategies demonstrated, or the number of the success stories told, there will always be the underlying fallacy that Section 14(c) is necessary in order to help those that are unable to obtain competitive integrated employment.

With respect to the ills of Section 14(c), I have the lived experience to be able to speak from the perspective of a family member, consumer of services, service provider, and advocate.

My older brother became blind as a result of Retinitis pigmentosa (RP) in high school and unfortunately was not taught Braille, independent travel, or other alternative skills of blindness as part of his secondary educational curriculum. He graduated high school and attempted to obtain a post-secondary degree, but without the pre-requisite skills to be successful in this environment, he was only able to complete one semester of his studies. Subsequently, the state vocational rehabilitation (VR) system attempted to assist him in obtaining gainful employment, but still did not encourage or support training in the alternative skills of blindness that would have allowed him to be competitive with his sighted peers. The initial job placement the VR "professionals" arranged for my brother was as a file clerk. Using thick magnifying glasses, and a bright hand-held lighted magnifier, he was responsible for filing and retrieving files from various filing cabinets throughout the office. Needless to say, he was not successful, and this opportunity lasted for only a very short period of time. Thankfully, he was able to obtain Social Security benefits that afforded him a minimal income for basic necessities.

This continuum of systemic failures that prohibited my brother from acquiring skills that would allow him to be independent and gainfully employed had a direct negative impact on my brother's self-confidence and self-concept, and left him dependent on public benefits. Moreover, my mother, who had already been dealing with an inappropriate sense of guilt and an overwhelming sense of helplessness became more desperate to find any solution that would provide my brother with a sense of value and worth. Unfortunately, the solution was the Georgia Industries for the Blind (GIB), which at that time was a sheltered workshop that paid employees a piece rate based on the FLSA Section 14(C) Special (Subminimum) Wage Certificate.

This noncompetitive segregated environment was not designed for skills acquisition and did not present opportunities for upward mobility. In fact, the supervisors/managers, with no expertise in blindness, actually encouraged employees not to exceed an income that would adversely impact their Social Security Administration (SSA) benefits. Yet, the external perception was that this was a wonderful institution, which offered blind people an opportunity to experience the benefits of "work," and gave them something to do besides staying at home. Without offering additional details, my brother never achieved more.

My sister lost her sight to RP in college. She also attempted to obtain a college degree without receiving blindness skills training, and only completed a year of college. She went to work at GIB with my brother. Fortunately, her VR counselor, which had experience and training in working with blind consumers, provided her training in the use of computer access technology that allowed her to obtain a job as a customer service clerk for a mail-order catalog company. She was able to advance and secure other more gainful employment opportunities in other fields. She is now employed as a Financial Budget Analyst for the U.S. General Services Administration.

I became blind in 1989 as a result of RP at age twenty-five. Working my way through college, I had already had several various jobs by this point in my life, which afforded me an opportunity to acquire a host of transferrable job skills. Yet, when I became blind, I thought my destiny was GIB. Luckily, for me, I was exposed to successful blind individuals and blindness professionals that educated and supported me toward the acquisition of alternative skills of blindness, Braille, cane travel, access technology, and independent living skills. As a result of proper education and training, my sister and I have been able to improve our quality of life and achieve competitive integrated employment.

It is extremely important to note that it was not blindness that resulted in my brother's inability to obtain competitive integrated employment. In fact, I maintain that his ability to manipulate figures in his head and process other information without the benefit of being able to use Braille to read or write things down; his ability to get to whatever destination he desired without the ability to effectively and independently use a cane; and his ability to enlist the assistance of others to ensure that he completed other necessary tasks for his well-being demonstrated that he had the intellect and capacity to achieve so much more. He, like my sister, myself, and everyone else, simply needed the training and tools to be successful.

The failure of the education and vocational rehabilitation system is what prohibited my brother from achieving a competitive integrated employment outcome, not his blindness. The legal ability for an employer to support this systemic failure through the existence of subminimum wage

workshops that are marketed as wonderful environments to allow those considered “less capable” to participate in “work” presented his most significant barrier, and resulted in the termination of his desire to achieve more.

In full disclosure, I participated in the perpetuation of the FLSA Section 14(C) fallacy that people with disabilities could not be competitively employed by helping run an extended workshop while employed as a Job Placement Specialist at a community rehabilitation center in Atlanta, Georgia. We had blind consumers performing work under contracts for various letter mailing campaigns and small assembly tasks that generated significant revenue for the center. We brought donors, public officials, and employers on tours of the center stating we were providing work readiness training. We received donations, legislative support, but no employment opportunities resulted from our workshop efforts. However, once I received the proper training on how to effectively prepare and assist blind individuals with obtaining employment; and we finally made the decision to close the workshop, we were successful in employing all but one of the fifteen to twenty individuals in the workshop.

In addition to my receiving training on strategies and best practices for facilitating the employment of people with disabilities, the reason for our success was that we evolved as an organization. We changed our philosophy and implemented new strategies. It was nothing revolutionary. We discontinued exploiting the consumers as tools for marketing and fundraising. We set higher expectations for the consumers and ourselves, evaluated the strengths and interests of our consumers, provided specific job skills training, and proactively implemented a job placement strategy that demonstrated how the acquired talents of our consumers met the needs of the employer.

Most entities that cling to the FLSA Section 14(c) as a necessary tool for them to survive have not made this evolution. They may have a sincere desire to help improve the quality of life of people with disabilities, but desire is not a substitute for training and expertise. We should not adversely limit the potential of hundreds of thousands of people with disabilities because their custodians feel that they are providing opportunities that would otherwise be unavailable. Contrary to these assertions, there are other real opportunities to be pursued other than subminimum wage segregated employment or languishing at home. Many individuals with disabilities previously deemed unemployable by the institutions that profit on this falsehood, have obtain competitive integrated employment when exposed to trained professionals with the skill and desire to provide them with the proper training and support.

For more than fifty years of the implementation and enforcement of the Section 14(c) subminimum wage provision, it was considered reasonable to employ a blind person at subminimum wage rates. Although blindness is still a factor, and the disability itself has not changed, today, it is considered unthinkable to do so. Blindness was never a reasonable justification to allow the use of this discriminatory practice. In fact, Section 14(c) only prolonged our ability to be afforded the basic right to a fair minimum wage, and continues to deny that right to people with other disabilities. Section 14(c) perpetuates the perception that having a disability is equivalent to lacking capacity, and discourages the development and implementation of innovative strategies that enable people with all disabilities to be competitive.

With so many examples of successful entities that have evolved into the contemporary businesses that do not require the use of the FLSA Section 14(c) subminimum wage certificate, it is obvious that it is the business managers, not the workers with disabilities that lack the skills to be competitively employed. Yet, rather than requiring entities charged with the responsibility of employment of people with disabilities to have trained staff with expertise (that can use effective contemporary strategies used to assist people with disabilities obtain competitive integrated employment) we afford them the opportunity through Section 14(c), to mitigate their inexperience by allowing them to compensate for this inexcusable lack of talent by legally paying their workers with disabilities subminimum wages.

We continue to hold harmless those entities that lack the talent and expertise to train and support people with disabilities. We continue to diminish the harm being done to those subjected to these segregate environments with phrases like “the soft bigotry of low expectations.” We must openly and honestly admit that there are strong harmful results to the institutionalization of anyone within an environment that eventually convinces them that they have reached their full potential. Moreover, we mask the systemic failures that cause this harm by convincing the parents and family members that it is the disability that prohibits success, and not the lack of professional intervention and implementation of proven strategies to facilitate competitive integrated employment.

The National Federation of the Blind knows that blindness is not the characteristic that defines you or your future. Every day we raise the expectations of blind people, because low expectations create obstacles between blind people and our dreams. As the nation’s oldest largest civil rights organization of blind people, we have always known that the use of subminimum wage was unfair, discriminatory and immoral. We work to ensure that blind people will be able to receive the proper training and education that allows us to live the lives we want by advocating within the public systems charged with the responsibility to educate and rehabilitate the blind. We also innovate, execute, and disseminate best practices for projects and programs that teach fundamental blindness skills, as well as, those that teach strategies and techniques that enable blind people to be proficient in the areas of science, technology, engineering and mathematics. We truly believe that given the proper training and opportunity that blind people can compete on terms of equality in all areas. Our belief is what drives our innovation.

Customized Employment and the Discovery process are examples of successful innovative strategies for the competitive integrated employment of people with disabilities; that have been developed and implemented when those that believe in the capacity of people with disabilities and are supported through initiatives from the U.S. Department of Labor (USDOL) Office of Disability Employment Programs (ODEP). These strategies have created competitive integrated employment opportunities for individuals with developmental disabilities that would have remained housed in segregated subminimum wage environments.

These strategies are not the ultimate answer to the question of how do we assist every person with a disability obtain competitive integrated employment. However, they are examples of the types of strategies that can and will emerge if we continue to set higher expectations and continue to believe in the capacity of every person with a disability to be employed. Microsoft has engaged in a proactive effort to recruit, train, and support employees with autism in competitive work

environments. This untapped resource of talent would have gone unrecognized if we continued to support environments that labeled them incapable and hid them from the world. Innovative strategies have not, and will not, emerge from segregated subminimum wage work environments. Non-competitive segregated environments are simply not incubators for best practices for creation of opportunities or strategies. If we acquiesce, and continue to refuse to eliminate the discriminatory provision found in Section 14(c) of the FLSA, we obstruct the development of additional innovative strategies, and the systems may never improve.

We have spent, and continue to waste far too much time discussing how to fix Section 14(c). It needs to be eliminated. It is a failed piece of legislation founded solely in the belief that people with disabilities cannot obtain competitive integrated employment, written by those who do not possess the training, skills, or expertise to do so. It is important to note that the FLSA provides for the employment of individuals at subminimum wages in other specified categories such as student-learners (vocational education students), as well as full-time students employed in retail or service establishments, agriculture, or institutions of higher education. If there are those that still feel subminimum wage employment is necessary, then they should be required to meet the expectations set forth in those sections of the FLSA, which offer greater accountability through measurable objectives and time limitations, not sanctioned discrimination based on disability.

I appreciate the opportunity to offer my comments. I sincerely hope that we can eliminate the discriminatory provision of Section 14(c) of the FLSA, thereby incentivizing a sense of urgency toward the development of innovative strategies that lead toward the competitive integrated employment of every American citizen, including those with disabilities.

Thank you



Anil Lewis, M.P.A
Executive Director of the Jernigan Institute
National Federation of the Blind
410-659-9314, extension 2374
alewis@nfb.org